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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF MERCED

RAFAEL DOMINGUEZ, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

MIGUEL OROZCO FARM LABOR
CONTRACTOR INCORPORATED, a California
corporation; CONTINENTAL TOMATO
PACKERS, LLC, a California limited liability
company; and DOES 1 through 100,

Defendants.

Case No.: 20CV-01463

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT:**

- (1) MINIMUM WAGE VIOLATIONS
(LABOR CODE §§ 1182.12, 1194,
1194.2, 1197);**
- (2) REST PERIOD VIOLATIONS
(LABOR CODE §§ 226.7, 516, 558);**
- (3) FAILURE TO REIMBURSE
NECESSARY BUSINESS
EXPENDITURES (LABOR CODE
§§ 2802, 2804);**
- (4) WAGE STATEMENT
VIOLATIONS (LABOR CODE §
226 *et seq.*);**
- (5) WAITING TIME PENALTIES
(LABOR CODE §§ 201-203);**
- (6) UNFAIR COMPETITION (BUS &
PROF CODE § 17200 *et seq.*); AND**

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**(7) CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEYS
GENERAL ACT (LABOR CODE §
2698 *et seq.*).**
**DEMAND FOR JURY TRIAL
UNLIMITED CIVIL CASE**

1 Rafael Dominguez (“Plaintiff”) on behalf of himself and all others similarly situated,
2 hereby brings this First Amended Class and Representative Action Complaint (“Complaint”)
3 against Defendants Miguel Orozco Farm Labor Contractor Incorporated, a California
4 Corporation; Continental Tomato Packers, LLC, a California limited liability company, doing
5 business as DiMare Fresh—Sacramento, and DOES 1 to 100 (collectively “Defendants”),
6 inclusive, and on information and belief allege as follows:

7 **JURISDICTION**

8 1. Plaintiff, on behalf of himself and all others similarly situated, hereby brings this
9 action for recovery of unpaid wages and penalties under California Labor Code sections 201-
10 203, 226, 226.2, 226.7, 516, 558, 1182.12, 1194, 1194.2, 1197, 2802, 2804 and 2698 *et seq.*, and
11 Business and Professions Code section 17200 *et. seq.* (“Unfair Competition Law”), and
12 Industrial Welfare Commission Wage Order 14-2001 (“Wage Order 14”), in addition to seeking
13 declaratory relief and restitution. This action is brought pursuant to California Code of Civil
14 Procedure section 382. This Court has jurisdiction over Defendants’ violations of the California
15 Labor Code because the amount in controversy exceeds this Court's jurisdictional minimum.

16 **VENUE**

17 2. Venue as to each Defendant is proper in this judicial district pursuant to California
18 Code of Civil Procedure sections 395(a) and 395.5, as at least some of the acts and omissions
19 complained of herein occurred in Merced County. Defendants own, maintain offices, transact
20 business, have an agent or agents within the County of Merced, and/or otherwise are found within
21 the County of Merced, and Defendants are within the jurisdiction of this Court for purposes of
22 service of process.

23 **PARTIES**

24 3. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein,
25 Plaintiff was and currently is, a California resident. During the four years immediately preceding
26 the filing of this action and within the statute of limitations periods applicable to each cause of
27 action pled herein, Plaintiff was employed by Defendants as non-exempt employee in Merced
28 County. Plaintiff was, and is, a victim of Defendants’ policies and/or practices complained of

1 herein, lost money and/or property, and have been deprived of the rights guaranteed by sections
2 201-203, 226, 226.2, 226.7, 516, 558, 1182.12, 1194, 1194.2, 1197, 2802, 2804 and 2698 *et seq.*,
3 California's Unfair Competition Law, and Wage Order 14, which sets employment standards for
4 the agricultural industry.

5 4. Plaintiff is informed and believes, and based thereon alleges, that during the four
6 years preceding the filing this action and continuing to the present, Defendants did (and continue
7 to do) business within the County of Merced and the State of California by employing farm labor
8 employees to harvest tomatoes, and therefore, were (and are) doing business in the County of
9 Merced and the State of California.

10 5. Plaintiff is informed and believes, and based thereon alleges, that at all times
11 mentioned herein, Defendant Miguel Orozco Farm Labor Contractor Incorporated was and is the
12 employer of Plaintiff and all members of the Classes. Defendant Continental Tomato Packers,
13 LLC, is jointly liable for all civil legal responsibility and civil liability for the payment of wages,
14 including all sums payable to an employee or the state of California based upon any failure to
15 pay wages, pursuant to Labor Code section 2810.3.

16 6. Plaintiff does not know the true names or capacities, whether individual, partner,
17 or corporate, of the defendants sued herein as DOES 1 to 100, inclusive, and for that reason, said
18 defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to
19 further amend this Complaint when such true names and capacities are discovered. Plaintiff is
20 informed, and believes, and based thereon alleges, that each of said fictitious defendants, whether
21 individual, partners, or corporate, were responsible in some manner for the acts and omissions
22 alleged herein, and proximately caused Plaintiff and the Classes (as defined herein) to be subject
23 to the unlawful employment practices, wrongs, injuries and damages complained of herein.

24 7. At all times herein mentioned, each of said Defendants participated in the doing
25 of the acts hereinafter alleged to have been done by the named Defendants, and furthermore, the
26 Defendants, and each of them, were the agents, servants, and employees of each and every one
27 of the other Defendants, as well as the agents of all Defendants, and at all times herein mentioned
28 were acting within the course and scope of said agency and employment. Defendants, and each

1 of them, approved of, condoned, and/or otherwise ratified each and every one of the acts or
2 omissions complained of herein.

3 8. At all times mentioned herein, Defendants, and each of them, were members of
4 and engaged in a joint venture, partnership, and common enterprise, and acting within the course
5 and scope of and in pursuance of said joint venture, partnership, and common enterprise.

6 **GENERAL FACTUAL ALLEGATIONS**

7 9. Plaintiff worked for Defendant Miguel Orozco Farm Labor Contractor
8 Incorporated, as a non-exempt farm labor employee from approximately May 2019 to August
9 2019. Defendant Miguel Orozco Farm Labor Contractor Incorporated assigned Plaintiff to
10 harvest tomatoes in fields owned by Defendant Continental Tomato Packers, LLC. Defendants
11 did not board or lodge Plaintiff during his employment. Plaintiff was compensated on a piece-
12 rate basis, whereby he was paid a pre-determined amount per bucket of tomatoes he harvested.

13 10. Throughout Plaintiff's employment with Defendants, Defendants failed to
14 accurately compensate Plaintiff and other non-exempt piece-rate employees for all non-
15 productive time in accordance with Labor Code section 226.2. Specifically, Plaintiff and other
16 non-exempt piece-rate employees were required to report to work well before actually beginning
17 harvesting for the day, in order to perform preliminary tasks such as attending daily meetings,
18 waiting in line to wash their hands, and waiting in line to receive their produce buckets for
19 harvesting tomatoes. However, upon information and belief, Plaintiff and other non-exempt
20 employees were not able to clock-in for the day until *after* they had filled their first two buckets
21 of tomatoes for the day. Accordingly, all the time spent performing the aforementioned activities
22 was unrecorded and was not compensated as non-productive time. Additionally, on occasions
23 when employees completed a field prior to the end of the workday, they would have to travel to
24 a new field to continue working, and upon information and belief, Defendants failed to record
25 and compensate employees for such travel time as non-productive time. In total, Plaintiff
26 estimates that he experienced approximately 5 hours of non-productive time per workweek, but
27 was generally only compensated for significantly less, as denoted on Plaintiff's wage statements
28 as "Other Non-Productive." Accordingly, Plaintiff alleges that Defendants did not accurately

1 track and compensate employees' non-productive time in compliance with Labor Code section
2 226.2.

3 11. Defendants also did not compensate Plaintiff and other non-exempt piece-rate
4 employees for the correct number of rest and recovery periods, as required under Labor Code
5 section 226.2 and Wage Order 14 section 12 ("Every employer shall authorize and permit all
6 employees to take rest periods . . . based on the total hours worked daily at the rate of 10 minutes
7 net rest time per 4 hours or major fraction thereof"). Since Defendants failed to accurately record
8 all hours worked by Plaintiff and other non-exempt employees, including all non-productive time
9 spent performing preliminary activities prior to clocking-in, Defendants thereby failed to
10 authorize and permit the correct number of rest periods per work shift. Despite Defendants'
11 failure to authorize and permit Plaintiff and other non-exempt employees to take all lawful paid
12 rest periods due to their uniform and unlawful practices, Defendants never provided Plaintiff and
13 other non-exempt employees with an hour of pay at their regular rate for each rest period violation
14 as required by Labor Code section 226.7.

15 12. Additionally, Defendants required Plaintiff and other non-exempt piece-rate
16 employees to purchase a new pair of gloves each workday to harvest the produce. Despite
17 requiring Plaintiff and other non-exempt employees to purchase new gloves each day for work-
18 related purposes, Defendants failed to reimburse these non-exempt employees for all necessary
19 business expenses associated with purchasing gloves, in violation of Labor Code section 2802.

20 13. As a result of Defendants' failure to pay all minimum wages, failure to maintain
21 accurate timekeeping records, failure to accurately compensate Plaintiff and other non-exempt
22 piece-rate employees for non-productive time and the correct number of rest periods, and failure
23 to pay all rest period premium wages earned, Defendants have maintained inaccurate payroll
24 records, issued inaccurate wage statements, and failed to timely pay all wages owed to separating
25 employees at the time of their separation. Defendants' wage statements are further facially
26 deficient because they fail to list the accurate number of hours worked by the employee, and the
27 name and address of the legal entity that secured the services of the employer, in violation of
28 Labor Code section 226.

CLASS ACTION ALLEGATIONS

14. **Class Definitions:** Plaintiff brings this action on behalf of himself and the following Classes pursuant to section 382 of the Code of Civil Procedure:

a. The Minimum Wage Class consists of all current and former non-exempt employees of Defendant Miguel Orozco Farm Labor Contractor Incorporated who performed work for Defendant Continental Tomato Packers, LLC, that were compensated on a piece-rate basis, during the four years immediately preceding the filing of this action through the present.

b. The Rest Period Class consists of all current and former non-exempt employees of Defendant Miguel Orozco Farm Labor Contractor Incorporated who worked at least one shift in excess of 3.5 hours while performing work for Defendant Continental Tomato Packers, LLC, that were compensated on a piece-rate basis, during the four years immediately preceding the filing of this action through the present.

c. The Reimbursement Class consists of all current and former non-exempt employees of Defendant Miguel Orozco Farm Labor Contractor Incorporated who performed work for Defendant Continental Tomato Packers, LLC in California who were required to purchase gloves for work-related purposes without reimbursement, during the four years immediately preceding the filing of this action through the present.

d. The Wage Statement Class consists of: (i) all members of the Minimum Wage Class and/or Rest Period Class who received a wage statement from Defendants; and/or (ii) any of Defendants' current and former employees who received a wage statement, during the one year immediately preceding the filing of this action through the present.

e. The Waiting Time Class consists of all formerly employed members of the Minimum Wage Class and/or Rest Period Class who separated their employment from Defendants within the three years immediately preceding the filing of this action through the present.

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1 15. **Numerosity/Ascertainability:** The members of the Classes are so numerous that
2 joinder of all members would be unfeasible and not practicable. The membership of the classes
3 and subclasses are unknown to Plaintiff at this time; however, it is estimated that the Classes
4 number greater than two hundred (200) individuals as to each Class. The identity of such
5 membership is readily ascertainable via inspection of Defendants' employment records.

6 16. **Common Questions of Law and Fact Predominate/Well Defined Community**
7 **of Interest:** There are common questions of law and fact as to Plaintiff and all other similarly
8 situated employees, which predominate over questions affecting only individual members
9 including, without limitation to:

10 i. Whether Defendants paid all minimum wages owed for all hours worked
11 to members of the Minimum Wage Class pursuant to Labor Code sections 1182.12, 1194,
12 1194.2, and 1197;

13 ii. Whether Defendants' timekeeping policies/practices resulted in the
14 failure to properly compensate members of the Minimum Wage Class;

15 iii. Whether Defendants correctly compensated employees for rest periods
16 and other non-productive time pursuant to Labor Code section 226.2;

17 iv. Whether Defendants failed to reimburse members of the Reimbursement
18 Class for all necessary business expenses incurred pursuant to Labor Code sections 2802
19 and 2804;

20 v. Whether Defendants furnished legally compliant wage statements to
21 members of the Wage Statement Class pursuant to Labor Code section 226; and

22 vi. Whether Defendants timely paid all wages/compensation due upon
23 separation to members of the Waiting Time Class pursuant to Labor Code sections 201-
24 203.

25 17. **Predominance of Common Questions:** Common questions of law and fact
26 predominate over questions that affect only individual members of the Classes. The common
27 questions of law set forth above are numerous and substantial and stem from Defendants'
28 policies and/or practices applicable to each individual class member, such as Defendants'

uniform timekeeping policies/practices, rest period policies/practices, and wage statement policies/practices. As such, the common questions predominate over individual questions concerning each individual class member’s showing as to his or her eligibility for recovery or as to the amount of his or her damages.

18. **Typicality:** Plaintiff’s claims are typical of the claims of the Classes because Plaintiff was employed by Defendants as non-exempt piece-rate employees in California during the statutes of limitation periods applicable to each cause of action pled herein. As alleged herein, Plaintiff, like the members of the Classes, was deprived of all pay for non-productive time, all minimum wages earned, all paid rest periods, was furnished with inaccurate and incomplete wage statements, and was not timely paid all earned wages at the time of his separation.

19. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary steps to represent fairly and adequately the interests of the members of the Classes. Moreover, Plaintiff’s attorneys are ready, willing, and able to fully and adequately represent the members of the Classes and Plaintiff. Plaintiff’s attorneys have prosecuted and defended numerous wage and hour class actions in state and federal courts in the past and are committed to vigorously prosecuting this action on behalf of the members of the Classes.

20. **Superiority:** The California Labor Code is broadly remedial in nature and serves an important public interest in establishing minimum working conditions and standards in California. These laws and labor standards protect the average working employee from exploitation by employers who have the responsibility to follow the laws, and who may seek to take advantage of superior economic and bargaining power in setting onerous terms and conditions of employment. The nature of this action and the format of laws available to Plaintiff and members of the Classes make the class action format a particularly efficient and appropriate procedure to redress the violations alleged herein. If each employee was required to file an individual lawsuit, Defendants would necessarily gain an unconscionable advantage since they would be able to exploit and overwhelm the limited resources of each individual plaintiff with their vastly superior financial and legal resources. Moreover, requiring each member of the

Class(es) to pursue an individual remedy would also discourage the assertion of lawful claims by employees who would be disinclined to file an action against their former and/or current employer for real and justifiable fear of retaliation and permanent damages to their careers at subsequent employment. Further, the prosecution of separate actions by the individual class members, even if possible, would create a substantial risk of inconsistent or varying verdicts or adjudications with respect to the individual class members against Defendants herein; and which would establish potentially incompatible standards of conduct for Defendants; and/or legal determinations with respect to individual class members which would, as a practical matter, be dispositive of the interest of the other class members not parties to adjudications or which would substantially impair or impede the ability of the class members to protect their interests. Further, the claims of the individual members of the Classes are not sufficiently large to warrant vigorous individual prosecution considering all of the concomitant costs and expenses attending thereto. As such, the Classes (as defined herein) are maintainable under section 382 of the Code of Civil Procedure.

FIRST CAUSE OF ACTION
MINIMUM WAGE VIOLATIONS
(AGAINST ALL DEFENDANTS)

21. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

22. Wage Order 14 section 4 and California Labor Code sections 1197 and 1182.12 establish the right of employees to be paid minimum wages for all hours worked, in amounts set by state law. Labor Code sections 1194(a) and 1194.2(a) provide that an employee who has not been paid the legal minimum wage as required by Labor Code section 1197 may recover the unpaid balance together with attorneys' fees and costs of suit, as well as liquidated damages in an amount equal to the unpaid wages and interest accrued thereon.

23. At all relevant times herein, Defendants failed to conform their pay practices to the requirements of the law by failing to pay Plaintiff and members of the Minimum Wage Class for all hours worked including, but not limited to, all hours they were subject to the control of

Defendants and/or suffered or permitted to work under the California Labor Code and Wage Order 14.

24. California Labor Code section 1198 makes unlawful the employment of an employee under conditions that the IWC prohibits. California Labor Code sections 1194(a) and 1194.2(a) provide that an employer who has failed to pay its employees the legal minimum wage is liable to pay those employees the unpaid balance of the unpaid wages as well as liquidated damages in an amount equal to the wages due and interest thereon.

25. As a direct and proximate result of Defendants' unlawful conduct as alleged herein, Plaintiff and the Minimum Wage Class have sustained economic damages including, but not limited to, unpaid wages and lost interest, in an amount to be established at trial, and are entitled to recover economic and statutory damages and penalties and other appropriate relief as a result of Defendants' violations of the California Labor Code and Wage Order 14.

26. The foregoing practices and policies are unlawful and create an entitlement to recovery by Plaintiff and the members of the Minimum Wage Class in a civil action for the unpaid amount of minimum wages owing, including interest thereon, liquidated damages, statutory and civil penalties, attorney's fees, and costs of suit according to California Labor Code sections 204, 558, 1194, 1197, and 1198, Wage Order 14, and Code of Civil Procedure section 1021.5.

SECOND CAUSE OF ACTION

REST PERIOD VIOLATIONS

(AGAINST ALL DEFENDANTS)

27. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

28. Labor Code section 226.2 mandates that employees compensated on a piece-rate basis must be separately compensated for their rest periods at the higher of the minimum wage or the average hourly rate of pay during the workweek. Wage Order 14 section 12 mandates that employers shall authorize and permit rest periods "based on the total hours worked daily at the rate of ten (10) minute net rest time per four (4) hours or major fraction thereof. However, a rest

1 period need not be authorized for employees whose total daily work time is less than three and
2 one-half (3 1/2) hours.”

3 29. As alleged herein, and due to Defendants’ unlawful rest period policies and/or
4 practices, Defendants did not accurately compensate Plaintiff and members of the Rest Period
5 Class for all rest periods to which they were legally entitled. Despite Defendants’ violations,
6 Defendants failed to pay an additional hour of premium pay to Plaintiff and members of the Rest
7 Period Class at their respective regular rates of pay for each violation, as required by California
8 Labor Code section 226.7.

9 30. The foregoing policies and practices are unlawful and create an entitlement to
10 recovery by Plaintiff and the Rest Period Class in a civil action for the unpaid amount of rest
11 period premiums owing, including interest thereon, statutory penalties, civil penalties, and costs
12 of suit according to Labor Code sections 226.2, 226.7, 516, and 558, and Code of Civil Procedure
13 section 1021.5.

14 **THIRD CAUSE OF ACTION**

15 **FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES**

16 **(AGAINST ALL DEFENDANTS)**

17 31. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

18 32. At all relevant times herein, Defendants were subject to Labor Code section 2802,
19 which states that “an employer shall indemnify his or her employees for all necessary
20 expenditures or losses incurred by the employee in direct consequence of the discharge of his or
21 her duties, or of his or obedience to the directions of the employer.”

22 33. At all relevant times herein, Defendants were subject to Labor Code section 2804,
23 which states that “any contract or agreement, express or implied, made by any employee to waive
24 the benefits of this article or any part thereof, is null and void, and this article shall not deprive
25 any employee or his personal representative of any right or remedy to which he is entitled under
26 the laws of this State.”

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1 34. As alleged herein, due to Defendants' unlawful reimbursement practices,
2 Defendants failed to indemnify Plaintiff and the members of the Reimbursement Class for all
3 necessary business expenses incurred, including, among other things, personal cell phone usage.

4 35. As a proximate result of Defendants' policies and/or practices in violation of
5 Labor Code sections 2802 and 2804, Plaintiff and members of the Reimbursement Class are
6 entitled to damages, attorneys' fees and costs of suit, and interest thereon, in sums to be shown
7 according to proof at trial, pursuant to Labor Code section 2802.

8 **FOURTH CAUSE OF ACTION**
9 **WAGE STATEMENT PENALTIES**
10 **(AGAINST ALL DEFENDANTS)**

11 36. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

12 37. Plaintiff is informed and believes, and based thereon alleges, that Defendants
13 knowingly and intentionally, as a matter of uniform policy and practice, failed to furnish Plaintiff
14 and the Wage Statement Class with accurate and complete itemized wage statements that
15 included, among other requirements, (i) the employee's accurate gross wages earned, (ii) the
16 accurate total hours worked by the employee, and (iii) the name and address of the legal entity
17 that secured the services of the employer, in violation of Labor Code section 226.

18 38. Defendants' failure to furnish Plaintiff and members of the Wage Statement Class
19 with complete and accurate itemized wage statements resulted in actual injury, as said failures
20 led to, among other things, the non-payment of all minimum wages, rest period premiums and
21 deprived them of the information necessary to identify the discrepancies in Defendants' reported
22 data.

23 39. Defendants' failures create an entitlement to recovery by Plaintiff and members
24 of the Wage Statement Class in a civil action for all damages and/or penalties pursuant to Labor
25 Code section 226 *et. seq.*, including statutory penalties, civil penalties, reasonable attorneys'
26 fees, and costs of suit according to California Labor Code section 226 *et seq.*

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FIFTH CAUSE OF ACTION
WAITING TIME PENALTIES
(AGAINST ALL DEFENDANTS)

40. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

41. This cause of action is brought pursuant to Labor Code sections 201-203, which require an employer to pay all wages earned immediately at the time of separation of employment in the event the employer discharges the employee, or if the employee provides at least 72 hours of notice of his/her intent to quit. In the event the employee provides less than 72 hours of notice of his/her intent to quit, said employee's wages become due and payable not later than 72 hours upon said employee's last date of employment.

42. Plaintiff is informed and believes, and based thereon alleges, that Defendants failed to timely pay Plaintiff and members of the Waiting Time Class all final wages due to them at the time of their separation. Further, Plaintiff is informed and believes, and based thereon alleges, that as a matter of uniform policy and practice, Defendants continue to fail to pay members of the Waiting Time Class all earned wages at the end of employment in a timely manner pursuant to the requirements of Labor Code sections 201-203. Defendants' failure to pay all final wages was willful within the meaning of Labor Code section 203.

43. Defendants' willful failure to timely pay Plaintiff and members of the Waiting Time Class all earned wages upon separation from employment results in a continued payment of wages up to thirty (30) days from the time the wages were due. Therefore, Plaintiff and members of the Waiting Time Class are entitled to compensation pursuant to Labor Code section 203, plus reasonable attorneys' fees and costs of suit.

SIXTH CAUSE OF ACTION
UNFAIR COMPETITION
(AGAINST ALL DEFENDANTS)

44. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

45. Defendants have engaged and continue to engage in unfair and/or unlawful business practices in California in violation of California Business and Professions Code section

1 17200 *et seq.* by, amongst other things, failing to pay Plaintiff and the Classes all minimum
2 wages owed; failing to pay all required rest period premium wages owed; failing to reimburse
3 all necessary business expenses incurred; knowingly failing to furnish complete and accurate,
4 itemized wage statements; and failing to pay all final wages at the time of separation from
5 employment.

6 46. Defendants' utilization of these unfair and/or unlawful business practices
7 deprived Plaintiff, and continues to deprive members of the Classes, of compensation to which
8 they are legally entitled, constitutes unfair and/or unlawful competition, and provides an unfair
9 advantage over Defendants' competitors who have been and/or are currently employing workers
10 and attempting to do so in honest compliance with applicable wage and hour laws.

11 47. Because Plaintiff is a victim of Defendants' unfair and/or unlawful conduct
12 alleged herein, Plaintiff, for himself and on behalf of the members of the Classes, seek full
13 restitution of monies as necessary and according to proof, to restore any and all monies withheld,
14 acquired, and/or converted by Defendants pursuant to Business and Professions Code sections
15 17203 and 17208.

16 48. The acts complained of herein occurred within the four years immediately
17 preceding the filing of the Complaint in this action.

18 49. Plaintiff was compelled to retain the services of counsel to file this court action
19 to protect his interests and those of the Classes, to obtain restitution and injunctive relief on
20 behalf of Defendants' current non-exempt employees, and to enforce important rights affecting
21 the public interest. Plaintiff has thereby incurred the financial burden of attorneys' fees and
22 costs, which he is entitled to recover under Code of Civil Procedure section 1021.5.

23 **SEVENTH CAUSE OF ACTION**

24 **PRIVATE ATTORNEYS GENERAL ACT**

25 **(AGAINST ALL DEFENDANTS)**

26 50. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

27 51. Defendants have committed several Labor Code violations against Plaintiff,
28 members of the Classes, and other aggrieved employees. Plaintiff, as an "aggrieved employee"

1 within the meaning of Labor Code § 2698 *et seq.*, acting on behalf of himself and other aggrieved
2 employees, brings this representative action against Defendants to recover the civil penalties due
3 to Plaintiff, the members of the Classes, other aggrieved employees, and the State of California
4 according to proof pursuant to Labor Code §§ 558 and 2699 (a) and (f) including, but not limited
5 to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200.00 for
6 each subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for
7 each failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$50.00 for
8 each initial violation and \$100.00 for each subsequent violation pursuant to Labor Code § 558
9 per employee per pay period; (3) \$100.00 for each initial violation and \$250.00 for each
10 subsequent violation pursuant to Labor Code § 1197.1 per employee per pay period; (4) \$250.00
11 for each initial violation and \$1,000.00 for each subsequent violation pursuant to Labor Code §
12 226.3 per employee per pay period; and/or (5) \$100.00 for each initial violation and \$200.00 for
13 each subsequent violation per employee per pay period for those violations of the Labor Code
14 for which no civil penalty is specifically provided, based on the following Labor Code violations:

- 15 a. Failing to pay Plaintiff and other aggrieved piece-rate employees the statutory
16 minimum wage for all hours worked in violation of Labor Code §§ 1182.12,
17 1194, 1194.2, and 1197;
- 18 b. Failing to authorize and permit Plaintiff and other aggrieved piece-rate
19 employees to take all required rest periods and failing to pay rest period
20 premiums to Plaintiff and other aggrieved piece-rate employees at these
21 employees' respective regular rates of compensation for rest period violations
22 in violation of Labor Code §§ 226.7, 516, and 558;
- 23 c. Failing to reimburse Plaintiff and other aggrieved piece-rate employees for
24 all necessary business expenditures incurred in violation of Labor Code §§
25 2802 and 2804;
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- d. Failing to furnish Plaintiff and other aggrieved piece-rate employees with accurate and complete itemized wage statements in violation of Labor Code § 226, *et seq.*;
- e. Failing to timely pay all final wages due to Plaintiff and other aggrieved piece-rate employees in violation of Labor Code §§ 201, 202, and 203;
- f. Failing to pay Plaintiff and other aggrieved piece-rate employees all wages earned at least twice during each calendar month in violation of Labor Code § 204; and
- g. Failing to maintain accurate records on behalf of Plaintiff and other aggrieved piece-rate employees in violation of Labor Code §§ 1174 and 1198.

52. On or around April 3, 2020, Plaintiff notified Defendants via certified mail, and notified the California Labor and Workforce Development Agency (“LWDA”) via its website, of Defendants’ violations of the California Labor Code and Plaintiff’s intent to bring a claim for civil penalties under California Labor Code § 2698 *et seq.* with respect to the violations of the California Labor Code identified in Paragraph 51 (a)-(g). Now that sixty-five days have passed from Plaintiff notifying Defendants and the LWDA of these violations, and the LWDA has not provided notice that it intends to investigate the violations, Plaintiff has exhausted his administrative requirements for bringing a claim under the Private Attorneys General Act with respect to these violations.

53. Based on the foregoing, Plaintiff seeks to represent himself and all Aggrieved Employees, as defined by Labor Code § 2699(c), which includes all current and former non-exempt employees who worked for Defendants in California between April 3, 2019 and the present.

54. Plaintiff was compelled to retain the services of counsel to file this court action to protect his interests and the interests of other aggrieved piece rate employees, and to assess and collect the civil penalties owed by Defendants. Plaintiff has thereby incurred attorneys’ fees and costs, which he is entitled to recover under California Labor Code § 2699.

PRAYER

WHEREFORE, Plaintiff prays for judgment for himself and for all others on whose behalf this suit is brought against Defendants, as follows:

1. For an order certifying the proposed Classes;
2. For an order appointing Plaintiff as representatives of the Classes;
3. For an order appointing counsel for Plaintiff as counsel for the Classes;
4. Upon the First Cause of Action, for payment of minimum wages, liquidated damages, and penalties owed according to proof pursuant to Labor Code sections 1182.12, 1194, 1194.2 and 1197;
5. Upon the Second Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code sections 226.2, 226.7, 516, and 558;
6. Upon the Third Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code sections 2802 and 2804;
7. Upon the Fourth Cause of Action, for statutory penalties pursuant to Labor Code section 226 *et. seq.*;
8. Upon the Fifth Cause of Action, for statutory waiting time penalties pursuant to Labor Code sections 201-203
9. Upon the Sixth Cause of Action, for restitution to Plaintiff and members of the Classes of all money and/or property unlawfully acquired by Defendants by means of any acts or practices declared by this Court to be in violation of California Business and Professions Code section 17200 *et seq.*;
10. Upon the Seventh Cause of Action, for civil penalties due to Plaintiff, other aggrieved employees, and the State of California according to proof pursuant to Labor Code §§ 558 and 2699(a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200.00 for each subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100.00 for each subsequent violation pursuant to Labor Code § 558 per employee per pay period; (3)

\$100.00 for each initial violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per employee per pay period; (4) \$250.00 for each initial violation and \$1,000.00 for each subsequent violation pursuant to Labor Code § 226.3 per employee per pay period; and/or (5) \$100.00 for each initial violation and \$200.00 for each subsequent violation per employee per pay period for those violations of the Labor Code for which no civil penalty is specifically provided, based on the violations of Labor Code sections identified in Paragraph 51 (a)-(g) above

11. Prejudgment interest on all due and unpaid wages pursuant to Labor Code section 218.6 and Civil Code sections 3287 and 3289;

12. On all causes of action, for attorneys' fees and costs as provided by Labor Code sections 218.5, 226, 1194, 2802, and 2698 *et seq.*, and Code of Civil Procedure section 1021.5; and

13. For such other and further relief, the Court may deem just and proper.

Dated: June 8, 2020

Respectfully submitted,
HAINES LAW GROUP, APC

By:



Fletcher W. Schmidt
Attorney for Plaintiff

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial with respect to all issues triable by jury.

Dated: June 8, 2020

Respectfully submitted,
HAINES LAW GROUP, APC

By:



Fletcher W. Schmidt
Attorney for Plaintiff